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EXAMINER

CHEN, QING

ART UNIT

PAPER NUMBER

2191

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/687,901	Applicant(s) NAM ET AL.	
	Examiner Qing Chen	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is in response to the amendment filed on January 10, 2008.
2. **Claims 1-8** are pending.
3. **Claims 1-4, 6, and 8** have been amended.
4. The objection to the drawings is withdrawn in view of Applicant's amendments to the drawings.
5. The objection to the specification is withdrawn in view of Applicant's amendments to the specification.
6. The objections to Claims 1-4 and 6-8 are withdrawn in view of Applicant's amendments to the claims. However, Applicant's amendments to the claims fail to address the objection to Claim 2 due to improper antecedent basis. Accordingly, this objection is maintained and further explained below.
7. The 35 U.S.C. § 112, second paragraph, rejections of Claims 2 and 8 are withdrawn in view of Applicant's amendments to the claims.

Response to Amendment

Claim Objections

8. **Claims 2 and 4** are objected to because of the following informalities:
 - **Claim 2** recites the limitation "the home network." Applicant is advised to change this limitation to read "the local home network" for the purpose of providing it with proper explicit antecedent basis.

- **Claim 4** contains a typographical error: A semicolon (;) should be added after the first limitation.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 1-3 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over US **5,901,320 (hereinafter "Takahashi")** in view of US **6,782,527 (hereinafter "Kouznetsov")**.

As per **Claim 1**, Takahashi discloses:

- reading a system software version of a selected home appliance from among a plurality of home appliances, wherein the system software of the selected home appliance is to be upgraded among said plurality of home appliances, wherein a home server is connected to each of said plurality of home appliances in a local home network, wherein the selected home appliance communicates with the home server (*see Figure 1; Column 4: 9-13, "The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1."* and 28 and 29, "The versions of the

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program files for the CPU's 11 in each network element 1 are called a CPU issue each.”;

Column 5: 15-20, “The management means 22 first issues a command (e.g., RTRV-FILE-NVM) prompting the network element 1 to transfer the CPU issues of the programs being executed by the CPU's 11. In response, the network element 1 returns the CPU issues of the currently executing programs to the management means 22.”),

- wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update (see Figure 1; Column 4: 9-13, “The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1.”; Column 5: 7-12, “When the version of a program being executed currently is to be changed to a new version of the program to be executed by a CPU 11 next is changed, the management means 22 selects the program to be transferred to the network element 1 in accordance with the generic issue in the corresponding configuration file held in the database 21.”),

- reading a latest system software version corresponding to the selected home appliance from the home server (see Column 5: 20-23, “The returned CPU issues are compared with the CPU issues in that configuration file of the network element to which a change of the program version has been made.”);

- comparing the system software version of the selected home appliance in the local home network with the latest system software version of a corresponding selected home appliance in the home server (see Column 5: 20-23, “The returned CPU issues are compared

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with the CPU issues in that configuration file of the network element to which a change of the program version has been made.”);

- if the latest system software version of the corresponding selected home appliance in the home server is newer than the system software version of the selected home appliance in the local home network, downloading the latest system software of the corresponding home appliance from the home server (*see Column 5: 20-25, “The returned CPU issues are compared with the CPU issues in that configuration file of the network element to which a change of the program version has been made. Upon comparison, the changed program file is selected as the program to be transferred to the network element 1.” and 57-63, “... the transfer means 23 retrieves from the database 21 the program file selected by the management means 22 as well as the configuration file in which the program file version has been changed, generates download data in which the program file and the configuration file are set, and transfers the download data to the network element 1.”); and*

- replacing the system software of the selected home appliance with the downloaded system software through the local home network by copying the downloaded system software from the home server to the selected home appliance (*see Column 5: 57-63, “... the transfer means 23 retrieves from the database 21 the program file selected by the management means 22 as well as the configuration file in which the program file version has been changed, generates download data in which the program file and the configuration file are set, and transfers the download data to the network element 1.”).*

However, Takahashi does not disclose:

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- wherein a home server is connected to an appliance company server over an Internet;

and

- wherein a two-way communication connection is established between the home server and the appliance company server.

Kouznetsov discloses:

- wherein a home server is connected to an appliance company server over an Internet (*see Figure 1: 101, 105, and 108*); and

- wherein a two-way communication connection is established between the home server and the appliance company server (*see Figure 1: 101*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kouznetsov into the teaching of Takahashi to include wherein a home server is connected to an appliance company server over an Internet; and wherein a two-way communication connection is established between the home server and the appliance company server. The modification would be obvious because one of ordinary skill in the art would be motivated to distribute software updates via a central location (*see Kouznetsov – Column 3: 9-11*).

As per **Claim 2**, the rejection of **Claim 1** is incorporated; however, Takahashi does not disclose:

- wherein the step of reading the system software version of the selected home appliance in the local home network is periodically performed.

Kouznetsov discloses:

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- wherein the step of reading the system software version of the selected home appliance in the local home network is periodically performed (*see Column 9: 43-46, "It is contemplated that agent 202 can access server 211 periodically, sporadically, or on demand, for example, to determine if a new script or components require download."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kouznetsov into the teaching of Takahashi to include wherein the step of reading the system software version of the selected home appliance in the local home network is periodically performed. The modification would be obvious because one of ordinary skill in the art would be motivated to determine if any program components or scripts have changed (*see Kouznetsov – Column 9: 40-43*).

As per **Claim 3**, the rejection of **Claim 1** is incorporated; however, Takahashi does not disclose:

- wherein the step of reading the latest system software version corresponding to the selected home appliance from the appliance company server is periodically performed through the Internet.

Kouznetsov discloses:

- wherein the step of reading the latest system software version corresponding to the selected home appliance from the appliance company server is periodically performed through the Internet (*see Column 9: 43-46, "It is contemplated that agent 202 can access server 211 periodically, sporadically, or on demand, for example, to determine if a new script or components require download."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kouznetsov into the teaching of Takahashi to include wherein the step of reading the latest system software version corresponding to the selected home appliance from the appliance company server is periodically performed through the Internet. The modification would be obvious because one of ordinary skill in the art would be motivated to determine if any program components or scripts have changed (*see Kouznetsov – Column 9: 40-43*).

As per **Claim 8**, Takahashi discloses:

- determining a first version of a software code locally available to a first appliance (*see Figure 1; Column 4: 9-13, “The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1.” and 28 and 29, “The versions of the program files for the CPU's 11 in each network element 1 are called a CPU issue each.”; Column 5: 15-20, “The management means 22 first issues a command (e.g., RTRV-FILE-NVM) prompting the network element 1 to transfer the CPU issues of the programs being executed by the CPU's 11. In response, the network element 1 returns the CPU issues of the currently executing programs to the management means 22.”*);
- determining a second version of a software code designated for the first appliance and remotely available for the first appliance (*see Column 5: 20-23, “The returned CPU issues are compared with the CPU issues in that configuration file of the network element to which a change of the program version has been made.”*);

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- downloading the second version of the software code via the remote connection by way of the home server, in response to determining that the second version of the software code is newer than the first version of the software code (*see Column 5: 20-25, "The returned CPU issues are compared with the CPU issues in that configuration file of the network element to which a change of the program version has been made. Upon comparison, the changed program file is selected as the program to be transferred to the network element 1."* and 57-63, "... the transfer means 23 retrieves from the database 21 the program file selected by the management means 22 as well as the configuration file in which the program file version has been changed, generates download data in which the program file and the configuration file are set, and transfers the download data to the network element 1."); and

- replacing the first version with the second version (*see Column 5: 57-63, "... the transfer means 23 retrieves from the database 21 the program file selected by the management means 22 as well as the configuration file in which the program file version has been changed, generates download data in which the program file and the configuration file are set, and transfers the download data to the network element 1."*),

- wherein the first and second determining steps, and the downloading and the replacing steps for each of the plurality of appliances in the home network are performed by the home server (*see Figure 1; Column 4: 9-13, "The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1."*),

- wherein the home server is a centralized local home server, which determines which one of said plurality of appliances connected to it in the home network require a software update (see Figure 1; Column 4: 9-13, “The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1.”; Column 5: 7-12, “When the version of a program being executed currently is to be changed to a new version of the program to be executed by a CPU 11 next is changed, the management means 22 selects the program to be transferred to the network element 1 in accordance with the generic issue in the corresponding configuration file held in the database 21.”).

However, Takahashi does not disclose:

- a remote server connected to the home server over a remote connection; and
- wherein a two-way communication connection is established between the home server and the remote server.

Kouznetsov discloses:

- a remote server connected to the home server over a remote connection (see Figure 1: 101, 105, and 108); and
- wherein a two-way communication connection is established between the home server and the remote server (see Figure 1: 101).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kouznetsov into the teaching of Takahashi to include a remote server connected to the home server over a remote connection; and wherein a two-way communication connection is established between the home server and the remote

server. The modification would be obvious because one of ordinary skill in the art would be motivated to distribute software updates via a central location (*see Kouznetsov – Column 3: 9-11*).

11. **Claims 4-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US 2002/0012347 (hereinafter “Fitzpatrick”)** in view of **Takahashi**.

As per **Claim 4**, Fitzpatrick discloses:

- displaying a data broadcast which provides upgrade information of a system software of home appliances (*see Paragraph [0059], “FIG. 10 is a flowchart of a STB process 430 of retrieving an upgrade within the STB using data carousels in the embodiment. In operation, when an upgrade is available (step 402), the upgrade server of the cable head end 10 transmits the download descriptor carousel throughout the cable network 11 to STBs 200 (step 404).”*);
- selecting a system software of a home appliance to be updated from the data broadcast (*see Paragraph [0059], “FIG. 10 is a flowchart of a STB process 430 of retrieving an upgrade within the STB using data carousels in the embodiment. In operation, when an upgrade is available (step 402), the upgrade server of the cable head end 10 transmits the download descriptor carousel throughout the cable network 11 to STBs 200 (step 404).”*);
- downloading the selected system software from an appliance company server to a home server through Internet, wherein the home server is connected to the home appliance in a local home network (*see Figures 1 and 6; Paragraph [0024], “The system 100 includes a service provider head end 10, remote server 48, Internet 44, audio/visual devices 26, Internet*

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appliances 28, television 24, set-top box ("STB") 22, and remote control 36."; Paragraph [0059], "If linked descriptor is located in the descriptor carousel, it is downloaded and decoded to determine which module carousel will contain module upgrades for the STB (step 414) (for the particular STB model or software version)."; and

- replacing the system software of the home appliance at home with the downloaded system software by copying the downloaded system software from the home server to the home appliance over the local home network (*see Paragraph [0059], "When the module carousel matches one in the descriptor file, the STB waits for the corresponding modules of the module carousel, downloads, and installs them (steps 420 and 422). The STB 200 may generate an acknowledgment message when it successfully completes installation of all the modules associated with a descriptor file (steps 424 and 426)."*), and

- wherein a two-way communication connection is established between the home server and the appliance company server (*see Figure 1: 44*).

However, Fitzpatrick does not disclose:

- wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update.

Takahashi discloses:

- wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update (*see Figure 1; Column 4: 9-13, "The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1."*; Column 5:

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7-12, *"When the version of a program being executed currently is to be changed to a new version of the program to be executed by a CPU 11 next is changed, the management means 22 selects the program to be transferred to the network element 1 in accordance with the generic issue in the corresponding configuration file held in the database 21."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update. The modification would be obvious because one of ordinary skill in the art would be motivated to provide a centralized surveillance and control of the home appliances (*see Takahashi – Column 1: 49-52*).

As per **Claim 5**, the rejection of **Claim 4** is incorporated; and Fitzpatrick further discloses:

- wherein the home server is a set top box connected to a digital television receiver (*see Paragraph [0026], "The STB 22 may be coupled to the TV 24 ..."*).

As per **Claim 6**, Fitzpatrick discloses:

- transmitting a system software for a selected home appliance from an appliance company server to a broadcasting station through Internet (*see Figure 1; Paragraph [0024], "The system 100 includes a service provider head end 10, remote server 48, Internet 44, audio/visual devices 26, Internet appliances 28, television 24, set-top box ("STB") 22, and*

remote control 36.”; Paragraph [0025], “The media server 12 and Software code update server 16 are coupled by a transmission medium 20 to the set top box (STB) 22.”);

- *propagating a broadcasting stream including the system software (see Paragraph [0046], “In this embodiment there are three communications channels between the cable head end 10 and the STB 200 that the Upgrade Client/Server system 266 can use to transfer data and receive request/acknowledge messages including the cable modem interface, the out of band (“OOB”) channel, and the in band (“IB”) data channel.”);*

- *downloading the system software to a home server through a digital television receiver which receives the broadcasting stream, wherein the home server is connected to a plurality of home appliances in a home network (see Figure 6; Paragraph [0026], “... system 100 further includes a TV 24, such as a digital television.”; Paragraph [0059], “If linked descriptor is located in the descriptor carousel, it is downloaded and decoded to determine which module carousel will contain module upgrades for the STB (step 414) (for the particular STB model or software version).”); and*

- *replacing the system software of the selected home appliance with the system software downloaded to the home server through the home network (see Paragraph [0059], “When the module carousel matches one in the descriptor file, the STB waits for the corresponding modules of the module carousel, downloads, and installs them (steps 420 and 422). The STB 200 may generate an acknowledgment message when it successfully completes installation of all the modules associated with a descriptor file (steps 424 and 426).”), and*

- *wherein a two-way communication connection is established between the home server and the appliance server (see Figure 1: 44).*

However, Fitzpatrick does not disclose:

- wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to it in the home network require a software update.

Takahashi discloses:

- wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to it in the home network require a software update (*see Figure 1; Column 4: 9-13, "The system illustratively comprises a plurality of network elements (NE's) 1 such as optical multiplex transmitters and a monitoring apparatus (monitoring and control intelligence) 2 for centrally monitoring and controlling these network elements 1."; Column 5: 7-12, "When the version of a program being executed currently is to be changed to a new version of the program to be executed by a CPU 11 next is changed, the management means 22 selects the program to be transferred to the network element 1 in accordance with the generic issue in the corresponding configuration file held in the database 21."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to it in the home network require a software update. The modification would be obvious because one of ordinary skill in the art would be motivated to provide a centralized surveillance and control of the home appliances (*see Takahashi – Column 1: 49-52*).

As per **Claim 7**, the rejection of **Claim 6** is incorporated; and Fitzpatrick further discloses:

- wherein the home server is a set top box connected to the digital television receiver
(see Paragraph [0026], “The STB 22 may be coupled to the TV 24 ...”).

Response to Arguments

12. Applicant’s arguments filed on January 10, 2008 have been fully considered, but they are not persuasive.

In the Remarks, Applicant argues:

a) A review of the passage above reveals that agent 202 is executed within the appliance 117. Therefore, each appliance is directly connected to the application manager server such that the application manager server directly sends updates to the appliance. As such, each appliance is individually responsible for requesting, downloading, and replacing the software of the appliance through the network. In contrast, amended claim 1 recites a home server is connected to an appliance company server over an Internet and the home server is connected to each of said plurality of home appliances in a local home network. Thus, Kouznetsov teaches away from the claimed invention by requiring the agent within each appliance to individually and independently request, download, and replace the software directly from a remote server. Therefore, Kouznetsov cannot teach or disclose "a home server is connected to an appliance company

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server over an Internet and the home server is connected to each of said plurality of home appliances in a local home network," as recited in amended claim 1.

Examiner's response:

a) Examiner disagrees. Applicant's arguments are not persuasive for at least the following reasons:

First, in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Second, in rejecting the particular limitations of "wherein a home server is connected to an appliance company server over an Internet" and "wherein a two-way communication connection is established between the home server and the appliance company server," the Examiner cited Figure 1, Elements 101, 105, and 108 of Kouznetsov. Element 101 clearly illustrates an Internet infrastructure; Element 105 clearly illustrates a connect server; and Element 108 clearly illustrates an application management server. Thus, the connect server (home server) is connected to the application management server (appliance company server) over the Internet (two-way communication connection).

Third, the Examiner disagrees with Applicant's assertion that each appliance in Kouznetsov is directly connected to the application management server. Figure 1 of Kouznetsov clearly illustrates that each appliance is connected to a connect server in a LAN and the connect server is connected to the application management server via the Internet. Therefore, any

communication made between the appliance and the application management server must travel through the connect server.

In the Remarks, Applicant argues:

b) Col. 5 lines 28-31 of Kouznetsov disclose that "connect servers 105 are implemented by connection sharing software such as Microsoft Internet connection sharing service (ICS) or by software such as found in routers." Applicant submits that connection sharing software is not the same as a home server recited in claim 1. As recited in claim 1, "the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update." Kouznetsov fails to teach or suggest that the connect servers determine which one of a said plurality of home appliances require a software update. Applicant submits that the connect server disclosed in Kouznetsov is simply a device which allows a plurality of appliances to share a network connection. Therefore, in addition to the reasons presented above, Kouznetsov cannot teach or suggest "wherein a home server is connected to an appliance company server over an Internet," as recited in amended claim 1.

Examiner's response:

b) Examiner disagrees. Applicant's arguments are not persuasive for at least the following reasons:

First, the claim recites only a "home server" with no further clarification on the claim scope of the term "server" as intended by the Applicant to cover. The claim only defines the

“home server” as a centralized local home server. The claims are not limited to the scope of a physical computer server. Thus, as the claims are interpreted as broadly as their terms reasonably allow (see MPEP § 2111.01 I), the interpretation of a broad limitation of “home server” as a connect server implemented with connection sharing software and the like by one of ordinary skill in the art is considered to be reasonable by its plain meaning.

Second, with respect to Applicant’s arguments that Kouznetsov fails to teach or suggest that the connect servers determine which one of a said plurality of home appliances require a software update, note that Kouznetsov is relied upon for the rejection of the particular limitations of “wherein a home server is connected to an appliance company server over an Internet” and “wherein a two-way communication connection is established between the home server and the appliance company server.” Takahashi clearly discloses “wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to it in the local home network require a software update.” See § 103 rejection of Claim 1 above.

Third, Applicant asserts that the connect server disclosed in Kouznetsov is simply a device which allows a plurality of appliances to share a network connection. Thus, Applicant acknowledges that the connect server is functionally equivalent to a home server that is connected to a plurality of appliances in a network as recited in Claim 1.

In the Remarks, Applicant argues:

c) Applicant respectfully submits that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be

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derived from combining the teachings." In re Sernaker, 217 USPQ 1, 6 (Fed. Cir. 1983). Further, it is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Since obviousness may not be established by hindsight reconstruction or conjecture, Applicant invites the Examiner to point out the alleged motivation to combine with specificity, or alternatively provide a reference or affidavit in support thereof pursuant to MPEP §2144.03.

Examiner's response:

c) Examiner disagrees. As previously pointed out in the Non-Final Rejection (mailed on 09/11/2007), the Examiner clearly provided a motivation to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update. The modification would be obvious because one of ordinary skill in the art would be motivated to provide a centralized surveillance and control of the home appliances (see Takahashi – Column 1: 49-52). Thus, the motivation to combine is clearly stated in the cited prior art.

Furthermore, MPEP § 2144.03 is directed to Examiner's taking of Official Notice. Since no Official Notice was taken by the Examiner with regard to the rejections of Claims 4-7, the Examiner does not need to provide a reference or affidavit pursuant to MPEP § 2144.03.

In the Remarks, Applicant argues:

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d) As such, Takahashi does not provide a motivation to combine with Fitzpatrick because Takahashi requires the monitoring apparatus to store in advance a plurality of program files for each CPU, unlike Fitzpatrick which downloads information and determines whether the downloaded data should be installed. Applicant submits that there is no indication in the Office Action, how such combination is possible, as the two systems are independently complex and cannot be easily modified to work with each other. As such, no portions of the cited references provide a suggestion or motivation for combining the references in a manner that would make the invention as recited in claims 4-7 obvious.

Examiner's response:

d) Examiner disagrees. Note that Fitzpatrick and Takahashi are analogous art because both Fitzpatrick and Takahashi are concerned with transferring software updates to a plurality of networked devices. Fitzpatrick teaches transferring software update from a service provider head end to set top boxes connected to the cable network. However, Fitzpatrick does not teach a central server that determines which set top box in the cable network requires a software update. Takahashi teaches a central server that determines which network element in the network requires a software update. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update. The modification would be obvious because one of ordinary skill in the art would be motivated

to provide a centralized surveillance and control of the home appliances (see Takahashi – Column 1: 49-52).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Qing Chen whose telephone number is 571-270-1071. The Examiner can normally be reached on Monday through Thursday from 7:30 AM to 4:00 PM. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Wei Zhen, can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/QC/
March 6, 2008

/Wei Zhen/

Supervisory Patent Examiner, Art Unit 2191